

## Message Text

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ACTION L-03

INFO OCT-01 EUR-25 EA-11 IO-14 ISO-00 CAB-09 CIAE-00

COME-00 DODE-00 DOTE-00 EB-11 INR-10 NSAE-00 RSC-01

FAA-00 AF-10 ARA-16 NEA-14 OIC-04 PM-07 H-03 NSC-07

PA-04 PRS-01 SP-03 SS-20 USIA-15 SAJ-01 OMB-01 DRC-01

/192 W

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P R 071900Z MAY 74

FM AMCONSUL MONTREAL

TO SECSTATE WASHDC PRIORITY 4721

INFO USLO PEKING

AMCONSUL HONG KONG

USMISSION USUN NEW YORK

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FOR L/T BEVANS

FROM USREP ICAO

E. O. 11652: N/A

TAGS: ETRN, CA

SUBJ: ICAO - PRC PARTICIPATION

1. NUMBERED PARA 2 IS TEXT OF ICAO "CONFIDENTIAL" MEMO DATED MAY 6 FROM PRES/COUNCIL TO USREP, FOLLOWED BY ANNEX I (FEB 15 LETTER FROM PRC GIVING DECISION "TO PARTICIPATE IN THE ACTIVITIES OF ICAO"); ANNEX II - REPLY FROM SECGEN DATED MARCH 6 REQUESTING CLARIFICATION; ANNEX III - PRC RESPONSE DATED APRIL 4 CLARIFYING FEB 15 LETTER AND ANNEX IV - POSSIBLE TEXT OF COMMUNICATION FROM SECGEN TO ALL CONTRACTING STATES ADVISING THEM OF DEVELOPMENTS. PRES/COUNCIL WOULD APPRECIATE HAVING US DECISION ASAP.

2. QUOTE 1. ON FEBRUARY 15, 1974, THE MINISTER OF FOREIGN AFFAIRS  
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OF THE PEOPLE'S REPUBLIC OF CHINA SENT TO THE ICAO SECRETARY

GENERAL A COMMUNICATION, COPY OF WHICH APPEARS IN ANNEX 1  
HERETO. THE COMMUNICATION WAS RECEIVED IN MONTREAL ON 28 FEBRUARY  
1974.

2. ON 6 MARCH THE ICAO SECRETARY GENERAL WROTE TO THE MINISTER OF  
FOREIGN AFFAIRS ASKING CLARIFICATION REGARDING TWO POINTS OF THE  
SECOND PARAGRAPH OF THE MINISTER'S LETTER. SEE COPY IN ANNEX 2.

3. ON 4 APRIL THE MINISTER OF FOREIGN AFFAIRS REPLIED TO  
THE SECRETARY GENERAL. THE LETTER WAS RECEIVED IN MONTREAL ON  
2 MAY (DUE TO THE CANADIAN POSTAL STRIKE). COPY OF THE REPLY  
APPEARS IN ANNEX 3.

4. DURING THE VISIT OF DR. KOTAITE TO PEKING (25 TO 30 APRIL) HE  
WAS OFFICIALLY TOLD THAT THE SECOND PARAGRAPH OF THE MINISTER'S  
COMMUNICATION OF 15 FEBRUARY DID NOT CONSTITUTE RESERVATIONS  
REGARDING THE CONVENTION BUT ONLY CLARIFICATION AND COMMENTS  
ON THE PART OF CHINA.

5. ICAO HAS TREATED CHINA AS A CONTRACTING STATE AFTER THE COUNCIL  
DECISION OF 19 NOVEMBER 1971; ALL THAT THAT DECISION MEANT WAS  
THAT THE REPRESENTATION OF CHINA CHANGED FROM TAIWAN TO PEKING.  
ALL ICAO PUBLICATIONS HAVE LISTED AND/OR COUNTED CHINA AS ONE  
OF THE ICAO STATES.

6. ICAO STATES MUST BE INFORMED OF THE TWO LETTERS OF THE MINISTER  
OF FOREIGN AFFAIRS. BINAGHI AND KOTAITE CONSIDER THAT SINCE CHINA  
HAS BEEN TREATED AS A CONTRACTING STATE AND THE TWO LETTERS  
WERE ADDRESSED TO THE ICAO SECRETARY GENERAL, IT WOULD BE DESIR-  
ABLE THAT ICAO INFORMS STATES. THE POSSIBLE TEXT OF THE COMMUNI-  
CATION APPEARS IN ANNEX 4.

7. THE UNITED STATES IS THE DEPOSITARY OF THE CHICAGO CONVENTION.  
ALTHOUGH AS A DEPOSITARY IT DID NOT TAKE ANY ACTION REGARDING  
THE COUNCIL'S DECISION OF 19 NOVEMBER 1971, THE USA MAY CONSIDER  
THAT IT HAS TO CIRCULATE THE TWO LETTERS OF THE MINISTER OF  
FOREIGN AFFAIRS. IN THAT CASE, THE COMMUNICATION COULD TAKE THE  
FORM SHOWN IN ANNEX 5. BINAGHI AND KOTAITE WOULD APPRECIATE  
INCLUSION OF THE PARAGRAPH REFERRING TO ICAO'S LETTER E 1/1.102 -  
71/231.

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8. IF THE UNITED STATES PREFERS NOT RPT NOT TO CIRCULATE THE  
TWO LETTERS, THEN ICAO WILL SEND THE LETTER IN ANNEX 4 BUT BINAGHI  
AND KOTAITE BELIEVE THAT IN THAT CASE IT WOULD BE DESIRABLE  
TO ADD AN ADDITIONAL PARAGRAPH ALONG THE LINES OF THE PARAGRAPH  
APPEARING AT THE BOTTOM OF ANNEX 4.

10. THERE IS AN ELEMENT OF URGENCY IN DECIDING THE COURSE OF

ACTION TO BE TAKEN, SINCE THE CHINESE AUTHORITIES EXPLAINED TO DR. KOTAITE THAT THEY WANTED ALL ICAO STATES TO BE RAPIDLY INFORMED THAT THE PEOPLE'S REPUBLIC OF CHINA ACCEPTED THE CHICAGO CONVENTION.

11. BINAGHI AND KOTAITE WILL APPRECIATE A REPLY FROM THE USA ON THEIR PREFERRED COURSE OF ACTION AS SOON AS POSSIBLE. SIGNED WALTER BINAGHI. P.S. THE MINISTER'S LETTER OF 15 FEBRUARY 1974 ALSO RATIFIES A NUMBER OF PROTOCOLS, INCLUDING THE ONE ON THE AUTHENTIC TRILINGUAL TEXT, FOR WHICH THE USA HAS TO NOTIFY ICAO STATES. THAT CAN BE HANDLED SEPARATELY AT A LATER DATE AND IN ANY MANNER THE USA GOVERNMENT MAY PREFER. UNQUOTE

3. ANNEX I QUOTE: PEKING, FEB. 15, 1974. DEAR MR. KOTAITE,

1. I HAVE THE HONOR TO INFORM YOU THAT THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA HAS DECIDED TO RECOGNIZE THE CONVENTION ON INTERNATIONAL CIVIL AVIATION, WHICH THE THEN GOVERNMENT OF CHINA SIGNED IN CHICAGO ON DECEMBER 9, 1944 AND OF WHICH AN INSTRUMENT OF RATIFICATION WAS DEPOSITED BY IT ON FEBRUARY 20, 1946, AS WELL AS THE PROTOCOL AMENDING ARTICLE 93 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION, WHICH IT SIGNED IN MONTREAL ON MAY 27, 1947 AND OF WHICH AN INSTRUMENT OF RATIFICATION WAS DEPOSITED BY IT ON MARCH 24, 1948. THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA HAS ALSO DECIDED TO PARTICIPATE IN THE ACTIVITIES OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION AS FROM THIS DATE.

2. FOR REASONS OF SAFETY OF FLIGHT AND PUBLIC SAFETY AND IN THE LIGHT OF THE PROVISIONS OF ARTICLES 5 AND 9 OF CHAPTER II OF THE CONVENTION, ANY FOREIGN CIVIL AIRCRAFT ENGAGED IN NON-SCHEDULED FLIGHT THAT WISHES TO FLY INTO CHINESE TERRITORY IS REQUIRED TO MAKE PRIOR APPLICATION TO THE CHINESE GOVERNMENT. LIMITED OFFICIAL USE

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SUCH AIRCRAFT MAY ENTER CHINESE TERRITORY ONLY AFTER RECEIVING A REPLY OF APPROVAL AND MUST OBSERVE THE REGULATION OF FOLLOWING THE ASSIGNED ROUTE AND LANDING AT THE DESIGNATED AIRPORT. APPLICATION OF CHAPTER XVIII OF THE CONVENTION MUST BE BASED ON THE PRINCIPLE OF NOT INFRINGING ON CHINA'S SOVEREIGNTY.

3. I AM ALSO AUTHORIZED TO DECLARE ILLEGAL AND NULL AND VOID ALL THE SIGNATURES AND RATIFICATIONS BY THE CHIANG KAI-SHEK CLIQUE USURPING THE NAME OF THE CHINESE GOVERNMENT AFTER THE FOUNDING OF THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON OCTOBER 1, 1949 IN REGARD TO OTHER PROTOCOLS TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION. HARPER

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P R 071900Z MAY 74

FM AMCONSUL MONTREAL

TO SECSTATE WASHDC PRIORITY 4722

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FOR L/T BEVANS

FROM USREP ICAO

3. I WISH ALSO TO INFORM YOU THAT THE GOVERNMENT OF THE PEOPLE'S  
REPUBLIC OF CHINA HAS DECIDED TO ADHERE TO THE FOLLOWING  
PROTOCOLS: (A) PROTOCOL AMENDING ARTICLE 45 OF THE CONVENTION ON  
INTERNATIONAL CIVIL AVIATION, SIGNED ON JUNE 14, 1954, (B)  
PROTOCOL AMENDING ARTICLE 48 (A), ARTIVLE 49(E) AND ARTICLE 61  
OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION, SIGNED ON  
JUNE 14, 1954, (C) PROTOCOL AMENDING ARTICLE 50(A) OF THE CONVEN-  
TION ON INTERNATIONAL CIVIL AVIATION, SIGNED ON JUNE 21, 1961,  
(D) PROTOCOL AMENDING ARTICLE 48(A) OF THE CONVENTION ON INTER-  
NATIONAL CIVIL AVIATION, SIGNED ON SEPTEMBER 15, 1962, (E)  
PROTOCOL ON THE AUTHENTIC TRILINGUAL TEXT OF THE CONVENTION ON  
INTERNATIONAL CIVIL AVIATION, SIGNED ON SEPTEMBER 24, 1968,  
(F) PROTOCOL AMENDING ARTICLE 50(A) OF THE CONVENTION ON  
INTERNATIONAL CIVIL AVIATION, SIGNED ON MARCH 12, 1971, (G)  
PROTOCOL AMENDING ARTICLE 56 OF THE CONVENTION ON INTERNATIONAL  
CIVIL AVIATION, SIGNED ON JULY 7, 1971. PLEASE ACCEPT THE  
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ASSURANCES OF MY HIGHEST CONSIDERATION. SIGNED: CHI PENG-FEI,  
MINISTER OF FOREIGN AFFAIRS OF THE PEOPLE'S REPUBLIC OF CHINA.  
UNQUOTE

4. ANNEX II QUOTE 6 MARCH 1974. EXCELLENCY,

1. I HAVE THE HONOUR TO REFER TO YOUR LETTER OF 15 FEBRUARY 1974,  
RECEIVED BY ME ON 28 FEBRUARY 1974 THROUGH YOUR EMBASSY IN  
CANADA, IN WHICH YOU INFORM ME THAT THE GOVERNMENT OF THE PEOPLE'S  
REPUBLIC OF CHINA HAS DECIDED TO RECOGNIZE THE CONVENTION  
ON INTERNATIONAL CIVIL AVIATION (CHICAGO, 7 DECEMBER 1944),  
AS WELL AS THE PROTOCOL AMENDING ARTICLE 93 THEEOF (MONTREAL,  
27 MAY 1947), AND THAT IT HAS ALSO DECIDED TO ADHERE TO THE  
SEVEN OTHER PROTOCOLS SPECIFIED IN YOUR LETTER.

2. I WISH TO SUBMIT FOR YOUR CONSIDERATION SOME COMMENTS  
CONCERNING TWO POINTS OF THE SECOND PARAGRAPH OF YOUR LETTER:

A) WITH REGARD TO NON-SCHEDULED FLIGHTS INTO CHINESE TERRITORY,  
YOU WOULD REQUIRE PRIOR APPLICATION, REPLY OF APPROVAL AND THE  
FOLLOWING OF ASSIGNED ROUTES. I WOULD BE GRATEFUL IF YOU COULD  
KINDLY CONFIRM THAT THE CONDITIONS OF PRIOR APPLICATION AND  
REPLY OF APPROVAL ARE MEANT TO BE APPLIED ONLY IN THE CASE OF  
FLIGHTS "OVER REGIONS WHICH ARE INACCESSIBLE OR WITHOUT ADEQUATE  
AIR NAVIGATION FACILITIES", AS A GENERAL APPLICATION OF SUCH  
CONDITIONS TO ALL CASES COVERED BY THE FIRST PARAGRAPH OF  
ARTICLE 5 WOULD BE CONTRARY TO THE ACCEPTED INTERPRETATION  
OF THIS ARTICLE. OBVIOUSLY, THE REQUIREMENT FOR THE FILING OF  
THE FLIGHT PLAN IS NOT PRECLUDED.

B) AS TO THE REFERENCE TO CHAPTER XVIII, I WOULD ASSUME THAT IT  
IS NOT MEANT TO CONSTITUTE A RESERVATION TO THE PROCEDURE FOR  
SETTLEMENT OF DIFFERENCES UNDER THAT CHAPTER.

3. I WOULD GREATLY APPRECIATE A REPLY AT YOUR EARLIEST  
CONVENIENCE TO THE QUESTIONS IN (A) AND (B) ABOVE. PLEASE  
ACCEPT, EXCELLENCY THE ASSURANCES OF MY HIGHEST CONSIDERATION.  
SIGNED ASSAD KOTAITE, SECRETARY GENERAL. UNQUOTE

5. QUOTE PEKING, APRIL 4, 1974. DEAR MR. KOTAITE,

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1. I HAVE THE HONOUR TO ACKNOWLEDGE RECEIPT OF YOUR LETTER  
OF MARCH 6, 1974. IN REPLY, I NOW STATE AS FOLLOWS:

2. MY LETTER OF FEBRUARY 15, 1974 TRANSMITTED THE CHINESE GOVERNMENT'S RECOGNITION OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION OF DECEMBER 9, 1944, WHICH WAS SIGNED, AND AN INSTRUMENT OF RATIFICATION OF WHICH WAS DEPOSITED, BY THE THEN CHINESE GOVERNMENT.

3. I TOOK THE OPPORTUNITY THEN TO INFORM YOU ALSO THAT A RULE OF THE CHINESE AERONAUTICAL AUTHORITIES REQUIRES A FOREIGN AIRCRAFT ON A NON-SCHEDULED FLIGHT INTO CHINESE TERRITORY TO OBTAIN PRIOR CLEARANCE FROM THE CHINESE AERONAUTICAL AUTHORITIES AND TO FOLLOW AN ASSIGNED ROUTE AND LAND AT A DESIGNATED AIRPORT. THIS RULE IS IN CONFORMITY WITH THE SECOND SENTENCE OF ARTICLE V PARAGRAPH 1 AND THE PROVISIONS CONCERNED UNDER ARTICLE IX OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION AND IS IN THE INTEREST OF FLIGHT SAFETY AND PUBLIC SAFETY. IT OF COURSE APPLIES WITHOUT DISTINCTION OF NATIONALITY TO AIRCRAFT OF ALL OTHER STATES. AS FOR MY REFERENCE TO CHAPTER XVIII IN MY PREVIOUS LETTER, I WAS EMPHASIZING THE PRINCIPLE OF RESPECT FOR SOVEREIGNTY. I BELIEVE THAT IS IN KEEPING WITH THE BASIC PRINCIPLES AND SPIRIT OF THE CONVENTION. PLEASE ACCEPT THE ASSURANCES OF MY HIGHEST CONSIDERATION. (SIGNED) CHI PENG-FEI, MINISTER OF FOREIGN AFFAIRS, THE PEOPLE'S REPUBLIC OF CHINA. UNQUOTE

6. ANNEX IV QUOTE POSSIBLE TEXT OF A COMMUNICATION FROM THE ICAO SECRETARY GENERAL.

1. I HAVE THE HONOUR TO REFER TO MY LETTER E 1/1.102 - 71/231, DATED 22 NOVEMBER 1971, INFORMING YOU OF THE COUNCIL RESOLUTION OF 19 NOVEMBER 1971 IN WHICH THE COUNCIL DECIDED "FOR THE MATTERS WITHIN ITS COMPETENCE, TO RECOGNIZE THE REPRESENTATIVES OF THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AS THE ONLY LEGITIMATE REPRESENTATIVES OF CHINA TO THE INTERNATIONAL CIVIL AVIATION ORGANIZATION".

2. BY A COMMUNICATION DATED 15 FEBRUARY 1974, THE MINISTER OF FOREIGN AFFAIRS OF THE PEOPLE'S REPUBLIC OF CHINA INFORMED ME THAT HIS GOVERNMENT RECOGNIZES THE CONVENTION ON INTERNATIONAL CIVIL AVIATION AND HAS DECIDED TO PARTICIPATE IN THE ACTIVITIES LIMITED OFFICIAL USE

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OF ICAO AS OF THAT DATE. COPY OF THE SAID COMMUNICATION IS ATTACHED HERETO.

3. IN REPLY TO MY REQUEST FOR CLARIFICATIONS REGARDING THE SECOND PARAGRAPH OF THE ABOVE-MENTIONED COMMUNICATION, I HAVE RECEIVED FROM THE MINISTER OF FOREIGN AFFAIRS A COMMUNICATION DATED 4 APRIL 1974, COPY OF WHICH IS ALSO ATTACHED. ACCEPT, SIR.... UNQUOTE

5. POSSIBLE ADDITIONAL PARAGRAPH IF THE USA DECIDES NOT RPT NOT

TO SEND A COMMUNICATION TRANSMITTING THE TWO MINISTER'S LETTERS.

QUOTE: I HAVE INFORMED THE GOVERNMENT OF THE UNITED STATES OF AMERICA, AS DEPOSITARY FOR THE CONVENTION ON INTERNATIONAL CIVIL AVIATION, OF THE ABOVE COMMUNICATIONS AND OF THE FACT THAT I WOULD BE INFORMING ICAO CONTRACTING STATES OF THEIR CONTENTS.

(ADD, TO WHICH THE USA GOVERNMENT HAS AGREED) UNQUOTE.

HARPER

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## Message Attributes

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